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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HASTINGS COLLEGE OF THE LAW, a
public trust and institution of higher education
duly organized under the laws and the
Constitution of the State of California;
FALLON VICTORIA, an individual; RENE
DENIS, an individual; TENDERLOIN
MERCHANTS AND PROPERTY
ASSOCIATION, a business association;
RANDY HUGHES, an individual; and
KRISTEN VILLALOBOS, an individual,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal entity,

Defendant.

Case No. 4:20-cv-3033 JST

**ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED
PURSUANT TO CIVIL LOCAL RULE 3-12**

Trial Date: Not Set

INTRODUCTION

Defendant City and County of San Francisco (“the City”) respectfully submits this Administrative Motion moving for a court order finding that this case, *Hastings College of Law et al. v. County of San Francisco, et al.*, (“*Hastings*”), is related to a later filed action regarding the City’s response to the homeless crisis created by COVID-19 in the Tenderloin and neighboring areas. The later filed action is *Daniel Giosso, James Giosso, and Richard Giosso, Trustees of the Giosso Children’s Trust; Mike O’Neill and Sons, a California General Partnership*, 3:20-cv-04255-TSH, (“*Giosso*”), filed on June 26, 2020. Declaration of Ryan Stevens (“*Stevens Dec*”), Ex. A. Plaintiffs in the *Hastings* action sought injunctive and declaratory relief requiring the removal of tents from sidewalks in the Tenderloin. Plaintiffs in the *Giosso* action seek nearly identical injunctive relief and sue regarding property that they allege is in the Tenderloin, although the City disputes that the property in that action is located within the bounds of the Tenderloin neighborhood. While the *Hastings* action settled as between the City and Plaintiffs, the Court retained jurisdiction to enforce the settlement and Intervenor has filed a complaint-in-intervention.

On July 29, 2020, Defendant filed an Administrative Motion to Relate two cases to this case: *Daniel Giosso, James Giosso, and Richard Giosso, Trustees of the Giosso Children’s Trust; Mike O’Neill and Sons, a California General Partnership*, 3:20-cv-04255-TSH, (“*Giosso*”), filed on June 26, 2020, and *Erin Maher, Jason Reindorp, Nick Medina, Monica Calmer, South of Market Business Association, 570 Jessie LLC, Sierrec LLC dba Montesacro Pinserie Romana, Megali Souvla Inc, dbd Souvla, Design like Whoa LLC v. City and County of San Francisco*, 4:20-cv-04771-KAW, (“*Maher*”), filed on July 16, 2020. The Court denied the motion without prejudice to refiling. ECF 82. *Maher* was subsequently dismissed.

Plaintiffs in this action have advised the City that they do not oppose this motion to relate the actions; however, Plaintiffs in this action asked us to state that they do not consent to any consolidation or joinder of the actions. *Stevens Dec* ¶ 3; *Rosenblit Dec* ¶ 2. Intervenor in this action have stated that they do not oppose relation of the cases. *Stevens Dec* ¶ 4; *Rosenblit Dec* ¶ 2. Plaintiffs in the *Giosso* action do not oppose relation. *Rosenblit Dec* ¶ 3; *Stevens Dec* ¶ 5.

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II. LEGAL STANDARD

Under Civil Local Rule 3-12(a), “[a]n action is related to another when (1) the actions concern substantially the same parties, property, transaction, or event; and (2) it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different judges.” Civ. L. R. 3-12(a). A party that believes that an action may be related to another action that “is or was” pending in this District “must promptly file in the lowest-numbered case an Administrative Motion to Consider Whether Cases Should Be Related, pursuant to Civil L.R. 7-11.” Civ. L. R. 3-12(b).

III. RELATIONSHIP OF THE ACTIONS

First, actions may be considered to “concern substantially the same parties, property, transaction, or event” under Local Rule 3-12(a)(1). Civ. L. R. 3-12(a)(1). Here, the plaintiffs in the actions are different, but both cases sue the City over the neighborhood impacts of the homeless crisis caused by COVID-19. There is a substantial overlap in factual allegations and legal claims. The *Giosso* action appears to be in large part copied and pasted from the *Hastings* action. Stevens Dec, Ex. A, *Giosso* Complaint. Many paragraphs setting forth the causes of action in the *Giosso* Complaint seem to have been copied directly from the *Hastings* Complaint and all of the causes of action in the *Giosso* Complaint are contained within the *Hastings* Complaint. See *Giosso* Complaint ¶¶ 45-91. These factors warrant treating the actions as related. See, e.g. *Our Children’s Earth Found. v. Nat’l Marine Fisheries Serv.*, Nos. 14-cv-1130 SC, 14-4365 SC, 2015 U.S. Dist. LEXIS 94997, at *38 (N.D. Cal. July 20, 2015) (relating cases involving “substantially the same matter” despite “slightly differing parties” and “a different underlying FOIA request”); *In re Leapfrog Enters., Inc. Sec. Litig.*, No. 03-cv-5421 RMW, 2005 U.S. Dist. LEXIS 44899, at *3-6 (N.D. Cal. July 5, 2005) (relating cases involving different plaintiffs that “name the same defendants, make similar factual allegations, and seek redress for violation of the same sections of the Securities and Exchange Act”).

Second, the cases should be related to avoid an “an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges” under Civil Local Rule 3-12(a)(2). Civ. L. R. 3-12(a)(2). Given the similar nature of these cases, both would benefit by an order relating them and assigning them to the same judge, thereby avoiding duplication of effort

1 and potentially conflicting rulings. *See Pepper v. Apple*, No. 11-cv-06714 YGR, 2019 U.S. Dist.
 2 LEXIS 143264, at *7 (N.D. Cal. Aug. 22, 2019).

3 The City is cognizant that this Court previously declined to relate an action that challenged a
 4 safe-sleeping site in the Haight neighborhood. However, unlike that case, the *Giosso* action concerns
 5 the exact same legal issues. The *Giosso* action purports to sue regarding the very same neighborhood
 6 as the *Hastings* action. Indeed, the *Giosso* action is similar to *Harrison v. City and County of San*
 7 *Francisco*, 20-cv-05178 JST, which this Court recently ordered related to *Hastings*. ECF 91.

8 CONCLUSION

9 Because *Giosso* and *Hastings* contain substantively similar allegations and claims, and because
 10 relating the cases would conserve judicial resources, the City moves this Court for an order finding the
 11 cases related.

12
 13 Dated: September 17, 2020

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23 By: /s/ Renee E. Rosenblit
 24 RENEÉ E. ROSENBLIT

25 Attorneys for Defendant
 26 CITY AND COUNTY OF SAN FRANCISCO
 27
 28

PROOF OF SERVICE

I, ANNAMARIE DAVIS, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On September 17, 2020, I served the following document(s):

**ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED
PURSUANT TO CIVIL LOCAL RULE 3-12**

on the following persons at the locations specified:

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in the manner indicated below:

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: annamarie.davis@sfcityatty.org in portable document format ("PDF") Adobe Acrobat.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed September 17, 2020, at San Francisco, California.



ANNAMARIE DAVIS